

State of California

**Public Utilities Commission
San Francisco**

M E M O R A N D U M

Date: April 29, 2002

To: The Commission
(Meeting of May 2, 2002)

From: Bill Julian
Office of Governmental Affairs (OGA) — Sacramento

Subject: **AB 1934 (Corbett)** - This bill would, with certain exceptions, require telephone corporations to perform or have performed an investigation into the background of applicants for employment, certain employees, independent contractors, and vendors.

The CPUC-OGA requests a formal position by the Commission for the above Assembly Bill. Please find bill summary attached.

AB 1934 (Corbett) Telephone Corporations: Background Security Checks

As Amended April 24, 2002

RECOMMENDATION: Support

SUMMARY:

This bill would, with certain exceptions, require telephone corporations to perform or have performed an investigation into the background of applicants for employment, certain employees, independent contractors, and vendors.

COMMENTS: This bill has no direct impact on the CPUC's Telecommunications Division workload and may offer some protection from harm to the telecommunications system.

ANALYSIS: AB 1934, as amended, adds Section 7910 to the Public Utilities Code requiring telephone corporations to conduct background investigations of applicants for employment, persons hired under a personal services contract, independent contractors and their employees, and vendors and their employees, according to current business practices.

The bill has no direct impact on the CPUC's Telecommunications Division workload and may offer some protection from harm to telecommunications system.

LEGISLATIVE STAFF CONTACT

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BILL LANGUAGE

BILL NUMBER: AB 1934 AMENDED
BILL TEXT

AMENDED IN ASSEMBLY APRIL 24, 2002
AMENDED IN ASSEMBLY APRIL 18, 2002

INTRODUCED BY Assembly Member Corbett

FEBRUARY 12, 2002

~~An act to amend Section 1105 of the Penal Code, and to add Sections 7910 and 7911 to the Public Utilities Code, relating~~
An act to add Section 7910 to the Public Utilities Code, relating to telephone corporations.

LEGISLATIVE COUNSEL'S DIGEST

AB 1934, as amended, Corbett. Telephone corporations: background security checks.

~~—(1) Existing~~

Existing law permits telephone corporations to construct, own, control, operate and manage telephone lines and to provide telephone service for compensation in the state, subject to regulation by the Public Utilities Commission.

~~This bill would require telephone corporations to conduct an investigation into the background of an applicant for employment to determine whether the applicant is a threat to the security of the telecommunications system. The bill would require the investigation to include whether the applicant has a criminal background which would require the submission of fingerprints and any requested related information, to the Department of Justice to obtain summary criminal history information. The bill would require the applicant to submit fingerprints and requested related information to the telephone corporation, to allow the telephone corporation to obtain summary criminal history information and subsequent arrest service from the Department of Justice and the Federal Bureau of Investigation. The bill would require the Department of Justice to expeditiously review the state summary criminal history information in its possession, and any summary criminal history information it obtains from the Federal Bureau of Investigation, and provide a~~

~~summary criminal history information to the requesting telephone corporation. The bill would authorize the Department of Justice to charge a reasonable fee for furnishing state summary criminal history information. The bill would require that the summary criminal history information obtained from the Department of Justice be confidential.~~

~~—This bill would also require every person performing service under a personal services contract to a telephone corporation, including independent contractors, vendors, and their employees, to provide the telephone corporation with the same background check, including the summary criminal history information. The bill would require the telephone corporation, independent contractor, or vendor to ensure the confidentiality of the summary criminal history information received under these provisions.~~

~~—The bill would provide that its provisions do not apply to persons that do not have contact or access to critical elements of the telephone network.~~

~~—Since an unauthorized disclosure of state summary criminal history information is a crime under existing provisions of law, this bill, by including telephone corporations as entities to which this prohibition is applicable, would impose a state-mandated local program by expanding the definition of a crime.~~

~~—(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~—This bill would provide that no reimbursement is required by this act for a specified reason.~~

This bill would, with certain exceptions, require telephone corporations to perform or have performed an investigation into the background of applicants for employment, certain employees, independent contractors, and vendors.

Vote: majority. Appropriation: no. Fiscal committee:

~~yes- no~~ . State-mandated local program:

~~yes- no~~ .

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

~~—SECTION 1. Section 11105 of the Penal Code is amended to~~

SECTION 1. Section 7910 is added to the Public Utilities Code, to read:

7910. (a) Telephone corporations shall perform background checks of applicants for employment, according to current business

practices.

(b) A background check equivalent to that described in subsection (a) shall also be conducted on all of the following:

(1) Persons hired by a telephone corporation under a personal services contract.

(2) Independent contractors and their employees.

(3) Vendors and their employees.

(c) Except as otherwise provided by contract, the telephone corporation shall not be responsible for administering the background checks and shall not assure the cost of the background checks of individuals who are not employees of the telephone corporation.

(d) This section is inapplicable to persons that do not have direct contact with or access to the telephone network, the telephone corporation's central office, or customer premises.

(e) This section shall not be applicable to temporary workers performing emergency functions to restore the network of a telephone corporation to its normal state in the event of a natural disaster or an emergency that threatens or results in the loss of service.

~~read:~~

~~—11105. (a) (1) The Department of Justice shall maintain state summary criminal history information.~~

~~—(2) As used in this section:~~

~~—(A) "State summary criminal history information" means the master record of information compiled by the Attorney General pertaining to the identification and criminal history of any person, such as name, date of birth, physical description, fingerprints, photographs, date of arrests, arresting agencies and booking numbers, charges, dispositions, and similar data about the person.~~

~~—(B) "State summary criminal history information" does not refer to records and data compiled by criminal justice agencies other than the Attorney General, nor does it refer to records of complaints to or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice.~~

~~—(b) The Attorney General shall furnish state summary criminal history information to any of the following, if needed in the course of their duties, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any entity, in fulfilling employment, certification, or licensing duties, Chapter 1321 of the Statutes of 1974 and of Section 432.7 of the Labor Code shall apply:~~

~~—(1) The courts of the state.~~

~~—(2) Peace officers of the state as defined in Section 830.1, subdivisions (a) and (c) of Section 830.2, subdivision (a) of Section 830.3, subdivisions (a) and (b) of Section 830.5, and subdivision (a) of Section 830.31.~~

- ~~—(3) District attorneys of the state.~~
- ~~—(4) Prosecuting city attorneys of any city within the state.~~
- ~~—(5) Probation officers of the state.~~
- ~~—(6) Parole officers of the state.~~
- ~~—(7) A public defender or attorney of record when representing a person in proceedings upon a petition for a certificate of rehabilitation and pardon pursuant to Section 4852.08.~~
- ~~—(8) A public defender or attorney of record when representing a person in a criminal case and if authorized access by statutory or decisional law.~~
- ~~—(9) Any agency, officer, or official of the state if the criminal history information is required to implement a statute or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct.~~
- ~~—(10) Any city or county, or city and county, or district, or any officer, or official thereof if access is needed in order to assist that agency, officer, or official in fulfilling employment, certification, or licensing duties, and if the access is specifically authorized by the city council, board of supervisors, or governing board of the city, county, or district if the criminal history information is required to implement a statute, ordinance, or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct.~~
- ~~—(11) The subject of the state summary criminal history information under procedures established under Article 5 (commencing with Section 11120) of Chapter 1 of Title 1 of Part 4.~~
- ~~—(12) Any person or entity when access is expressly authorized by statute if the criminal history information is required to implement a statute or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct.~~
- ~~—(13) Health officers of a city, county, or city and county, or district, when in the performance of their official duties enforcing Section 120175 of the Health and Safety Code.~~
- ~~—(14) Any managing or supervising correctional officer of a county jail or other county correctional facility.~~
- ~~—(15) Any humane society, or society for the prevention of cruelty to animals, for the specific purpose of complying with Section 14502 of the Corporations Code for the appointment of level 1 humane officers.~~

~~—(16) Local child support agencies established by Section 17304 of the Family Code. When a local child support agency closes a support enforcement case containing summary criminal history information, the agency shall delete or purge from the file and destroy any documents or information concerning or arising from offenses for or of which the parent has been arrested, charged, or convicted, other than for offenses related to the parent's having failed to provide support for minor children, consistent with the requirements of Section 17531 of the Family Code.~~

~~—(17) County child welfare agency personnel who have been delegated the authority of county probation officers to access state summary criminal history information pursuant to Section 272 of the Welfare and Institutions Code for the purposes specified in Section 16504.5 of the Welfare and Institutions Code. Information from criminal history records provided pursuant to this subdivision shall not be used for any purposes other than those specified in this section and Section 16504.5 of the Welfare and Institutions Code. When an agency obtains records obtained both on the basis of name checks and fingerprint checks, final placement decisions shall be based only on the records obtained pursuant to the fingerprint check.~~

~~—(18) (A) A telephone corporation, when requested for the purpose of conducting an investigation into the background of applicants pursuant to Section 7910 of the Public Utilities Code.~~

~~—(B) A person performing service under a personal services contract with a telephone corporation, including independent contractors, vendors, and their employees, when requested for the purpose of conducting a background investigation pursuant to Section 7911 of the Public Utilities Code.~~

~~—(c) The Attorney General may furnish state summary criminal history information upon a showing of a compelling need to any of the following, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any entity, in fulfilling employment, certification, or licensing duties, Chapter 1321 of the Statutes of 1974 and of Section 432.7 of the Labor Code shall apply:~~

~~—(1) Any public utility as defined in Section 216 of the Public Utilities Code that operates a nuclear energy facility when access is needed in order to assist in employing persons to work at the facility, provided that, if the Attorney General supplies the data, he or she shall furnish a copy of the data to the person to whom the data relates.~~

~~—(2) To a peace officer of the state other than those included in subdivision (b).~~

~~—(3) To a peace officer of another country.~~

~~—(4) To public officers (other than peace officers) of the United States, other states, or possessions or territories of the United~~

~~States, provided that access to records similar to state summary criminal history information is expressly authorized by a statute of the United States, other states, or possessions or territories of the United States if the information is needed for the performance of their official duties.~~

~~—(5) To any person when disclosure is requested by a probation, parole, or peace officer with the consent of the subject of the state summary criminal history information and for purposes of furthering the rehabilitation of the subject.~~

~~—(6) The courts of the United States, other states, or territories or possessions of the United States.~~

~~—(7) Peace officers of the United States, other states, or territories or possessions of the United States.~~

~~—(8) To any individual who is the subject of the record requested if needed in conjunction with an application to enter the United States or any foreign nation.~~

~~—(9) Any public utility as defined in Section 216 of the Public Utilities Code, if access is needed in order to assist in employing current or prospective employees who in the course of their employment may be seeking entrance to private residences. The information provided shall be limited to the record of convictions and any arrest for which the person is released on bail or on his or her own recognizance pending trial.~~

~~—If the Attorney General supplies the data pursuant to this paragraph, the Attorney General shall furnish a copy of the data to the current or prospective employee to whom the data relates.~~

~~—Any information obtained from the state summary criminal history is confidential and the receiving public utility shall not disclose its contents, other than for the purpose for which it was acquired. The state summary criminal history information in the possession of the public utility and all copies made from it shall be destroyed not more than 30 days after employment or promotion or transfer is denied or granted, except for those cases where a current or prospective employee is out on bail or on his or her own recognizance pending trial, in which case the state summary criminal history information and all copies shall be destroyed not more than 30 days after the case is resolved.~~

~~—A violation of this paragraph is a misdemeanor, and shall give the current or prospective employee who is injured by the violation a cause of action against the public utility to recover damages proximately caused by the violations. Any public utility's request for state summary criminal history information for purposes of employing current or prospective employees who may be seeking entrance to private residences in the course of their employment shall be deemed a "compelling need" as required to be shown in this subdivision.~~

~~—Nothing in this section shall be construed as imposing any duty upon public utilities to request state summary criminal history information on any current or prospective employees.~~

~~—(10) To any campus of the California State University or the University of California, or any four-year college or university accredited by a regional accreditation organization approved by the United States Department of Education, if needed in conjunction with an application for admission by a convicted felon to any special education program for convicted felons, including, but not limited to, university alternatives and halfway houses. Only conviction information shall be furnished. The college or university may require the convicted felon to be fingerprinted, and any inquiry to the department under this section shall include the convicted felon's fingerprints and any other information specified by the department.~~

~~—(d) Whenever an authorized request for state summary criminal history information pertains to a person whose fingerprints are on file with the Department of Justice and the department has no criminal history of that person, and the information is to be used for employment, licensing, or certification purposes, the fingerprint card accompanying the request for information, if any, may be stamped "no criminal record" and returned to the person or entity making the request.~~

~~—(e) Whenever state summary criminal history information is furnished as the result of an application and is to be used for employment, licensing, or certification purposes, the Department of Justice may charge the person or entity making the request a fee that it determines to be sufficient to reimburse the department for the cost of furnishing the information. In addition, the Department of Justice may add a surcharge to the fee to fund maintenance and improvements to the systems from which the information is obtained. Notwithstanding any other law, any person or entity required to pay a fee to the department for information received under this section may charge the applicant a fee sufficient to reimburse the person or entity for this expense. All moneys received by the department pursuant to this section, Sections 11105.3 and 12054 of the Penal Code, and Section 13588 of the Education Code shall be deposited in a special account in the General Fund to be available for expenditure by the department to offset costs incurred pursuant to those sections and for maintenance and improvements to the systems from which the information is obtained upon appropriation by the Legislature.~~

~~—(f) Whenever there is a conflict, the processing of criminal fingerprints and fingerprints of applicants for security guard or alarm agent registrations or firearms qualification permits submitted pursuant to Section 7514 of the Business and Professions Code shall take priority over the processing of applicant fingerprints.~~

~~—(g) It is not a violation of this section to disseminate statistical or research information obtained from a record, provided that the identity of the subject of the record is not disclosed.~~

~~—(h) It is not a violation of this section to include information obtained from a record in (1) a transcript or record of a judicial or administrative proceeding or (2) any other public record if the inclusion of the information in the public record is authorized by a court, statute, or decisional law.~~

~~—(i) Notwithstanding any other law, the Department of Justice or any state or local law enforcement agency may require the submission of fingerprints for the purpose of conducting summary criminal history information checks that are authorized by law.~~

~~—(j) The state summary criminal history information shall include any finding of mental incompetence pursuant to Chapter 6 (commencing with Section 1367) of Title 10 of Part 2 arising out of a complaint charging a felony offense specified in Section 290.~~

~~—SEC. 2. Section 7910 is added to the Public Utilities Code, to read:~~

~~—7910. (a) A telephone corporation shall conduct an investigation into the background of applicants for employment. The background check shall include whether the applicant has any arrests pending adjudication for, has entered a plea of guilty or nolo contendere to, or been found guilty or convicted of, a felony or a misdemeanor relevant to whether the applicant would be a threat to the security of the telecommunications system, regardless of whether the conviction has been expunged. The criminal background investigation shall include the submission of fingerprints and any requested related information, to the Department of Justice, and the obtaining of summary criminal history information, pursuant to this section. For purposes of this section, "arrests pending adjudication" include outstanding arrest warrants, arrests for offenses where the applicant is presently awaiting the settling of a trial date, arrests where the applicant is presently awaiting trial, whether the applicant is incarcerated, escaped incarceration, or has been released on bail or on his or her own recognizance. "Arrests pending adjudication" do not include arrests where no complaint was filed or a complaint was filed and dismissed.~~

~~—(b) Upon request by the telephone corporation, the applicant shall submit fingerprints and requested related information to the telephone corporation, to allow the telephone corporation to obtain summary criminal history information and subsequent arrest service from the Department of Justice and the Federal Bureau of Investigation, pursuant to Section 11105 and 11105.2 of the Penal Code. The telephone corporation shall submit fingerprints of the applicant, along with any requested related information, to the Department of Justice, for the purpose of obtaining summary criminal~~

history information from the Department of Justice and the Federal Bureau of Investigation relevant to the background investigation required in subdivision (a). The Department of Justice shall forward requests for federal level summary criminal history information to the Federal Bureau of Investigation. Fingerprints submitted pursuant to this section include fingerprints taken by the use of live scan technology or an electronic fingerprinting system.

—(c) The Department of Justice shall expeditiously review the state summary criminal history information in its possession, and any criminal history information it obtains from the Federal Bureau of Investigation, and provide a summary criminal history information pursuant to Section 11105 of the Penal Code to the requesting telephone corporation.

—(d) The Department of Justice may charge a reasonable fee for furnishing state summary criminal history information, pursuant to subdivision (e) of Section 11105 of the Penal Code, as well as a fee that may not exceed its actual costs incurred in obtaining information from the Federal Bureau of Investigation.

—(e) All summary criminal history information obtained from the Department of Justice is confidential. Each telephone corporation receiving criminal history information shall ensure the following:

—(1) No person receiving the summary criminal history information shall disclose its contents other than to discuss the results with the applicant, or provide copies of the information.

—(2) The summary criminal history information shall be stored in a secure place, accessible only to persons responsible for the screening of applicants.

—(3) The summary criminal history information shall be destroyed in a secure manner, including shredding, promptly after the hiring determination is made.

—(f) This section does not apply to persons that do not have contact or access to critical elements of the telecommunications network.

—SEC. 3. Section 7911 is added to the Public Utilities Code, to read:

—7911. (a) Every person performing service under a personal services contract with a telephone corporation, including independent contractors, vendors, and their employees, shall provide the telephone corporation with a background check. The background check shall include whether the person has any arrests pending adjudication for, has entered a plea of guilty or nolo contendere to, or been found guilty or convicted of, a felony or a misdemeanor relevant to whether the applicant would be a threat to the security of the telecommunications system, regardless of whether the conviction has been expunged. The criminal background investigation shall include the submission of fingerprints and any requested related information,

~~to the Department of Justice, and the obtaining of summary criminal history information, pursuant to this section. For purposes of this section, "arrests pending adjudication" include outstanding arrest warrants, arrests for offenses where the person is presently awaiting the settling of a trial date, arrests where the person is presently awaiting trial, whether the person is incarcerated, escaped incarceration, or has been released on bail or on his or her own recognizance. "Arrests pending adjudication" do not include arrests where no complaint was filed or a complaint was filed and dismissed.~~

~~—(b) The person described in subdivision (a) shall submit fingerprints and requested related information to the Department of Justice, for the purpose of obtaining summary criminal history information from the Department of Justice and the Federal Bureau of Investigation relevant to the background investigation required in subdivision (a). The Department of Justice shall forward requests for federal level summary criminal history information to the Federal Bureau of Investigation. Fingerprints submitted pursuant to this section include fingerprints taken by the use of live scan technology or an electronic fingerprinting system.~~

~~—(c) The Department of Justice shall expeditiously review the state summary criminal history information in its possession, and any criminal history information it obtains from the Federal Bureau of Investigation, and provide a summary criminal history information pursuant to Section 11105 of the Penal Code to the person requesting the information pursuant to subdivision (a). That information shall be provided to the telephone corporation for whom services are being performed.~~

~~—(d) The Department of Justice may charge a reasonable fee for furnishing state summary criminal history information, pursuant to subdivision (e) of Section 11105 of the Penal Code, as well as a fee that may not exceed its actual costs incurred in obtaining information from the Federal Bureau of Investigation.~~

~~—(e) All summary criminal history information obtained from the Department of Justice is confidential. Each telephone corporation, independent contractor, or vendor receiving summary criminal history information shall ensure the following:~~

~~—(1) No person receiving the summary criminal history information shall disclose its contents other than to discuss the results with the applicant, or provide copies of the information.~~

~~—(2) The summary criminal history information shall be stored in a secure place, accessible only to persons responsible for the screening of applicants.~~

~~—(3) The summary criminal history information shall be destroyed in a secure manner, including shredding, promptly after the personal services contract has been completed or terminated.~~

~~—(f) This section does not apply to persons that do not have contact or access to critical elements of the telephone network.~~
~~—SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.~~